



THE ASSOCIATE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON, D.C. 20240

JUN 10 2005

Honorable Ray Halbritter
Nation Representative
Oneida Indian Nation
Box 1
Vernon, New York 13476

Dear Mr. Halbritter:

I am writing with respect to Michael R. Smith's letter dated June 7, 2005 to Michael D. Olsen. In his letter, Mr. Smith addresses issues raised by Rocco J. Diveronica in his June 1, 2005 letter to Representative John McHugh concerning the Bureau of Indian Affairs ("BIA") recordation of 331 deeds submitted by the Oneida Indian Nation ("OIN"). In addressing Mr. Diveronica's objections to the recordation of the OIN deeds, Mr. Smith purports to represent that it is the position of the BIA that lands identified in the deeds submitted by the OIN for recordation in accordance with 25 C.F.R. § 150 are "restricted against alienation pursuant to 25 U.S.C. § 177." This is to advise you that Mr. Smith misstates the position of the BIA on this issue, and further, to inform you of the Department of Interior's ("DOI") position with respect to certain issues related to status of OIN lands.

While we would agree with Mr. Smith's statement that the Supreme Court's *City of Sherrill* decision did not disturb the Court's 1985 decision in the Nation's land claim litigation that Section 177 provides the Nation a right of action to damages for trespass based on its original grant of rights in the lands at issue, we do not agree with his assertion that the Court's ruling in *Sherrill* recognizes the continuation of restriction on alienation protections over recently re-acquired lands. Indeed, the Court in *City of Sherrill* stated:

In this action, OIN seeks declaratory and injunctive relief recognizing its present and future sovereignty immunity from local taxation on parcels of land the Tribe purchased in the local market, properties that had been subject to state and local taxation for generations. n. 7. We now reject the unification theory of OIN and the United States and hold that "standards of federal Indian law and federal equity practice" preclude the Tribe from rekindling embers of sovereignty that long ago grew cold.

Thus, it is our opinion that Court in *City of Sherrill* unmistakably held that the lands at issue (property interests purchased by OIN on the open market) are subject to real property taxes. In the event these taxes are not paid, we believe such lands are subject to foreclosure. Further, please be advised that the BIA is in the process of taking appropriate action to clarify that its recent recordation of OIN deeds does not have the legal effect of designating these lands as restricted against alienation pursuant to 25 U.S.C. 177. (See Enclosure)

With regard to the related issue of OIN's pending fee-to-trust applications, the Nation should be aware that it is Departmental policy not to accept into trust lands that are encumbered by tax liens. Accordingly, we urge the Nation to resolve any outstanding tax liens that may now encumber any of the lands for which you are seeking the United States to accept in trust.

Also in regard to your fee-into-trust application, we would also urge the Nation to prioritize the parcels the Tribe desires the United States to take into trust in order of the parcel's significance to the Nation. Prioritization of the parcels at issue in the pending application will greatly assist and inform the Department in deciding how to proceed in exercising the Secretary's discretion. We are especially interested in the Nation's views as to why particular parcels need to be held in trust. In addition, as a part of our evaluation process, we plan to consult with affected state and local jurisdictions to obtain their views on this subject as well.

If you have any questions or need additional information, please feel free to contact me at 202-208-6291.

Sincerely,



James E. Cason
Associate Deputy Secretary

Enclosure: Oneida Indian Nation Deed Transmittal Clarification

cc: Honorable George Pataki, Governor State of New York
Honorable Sherwood Boehlert, Representative of New York State
Honorable John McHugh, Representative of New York State
Rocco J. Diveronica, Chairman, Madison County Board of Supervisors
Joseph A. Griffo, Oneida County Executive
David R. Townsend, Member of Assembly, State of New York



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Washington, D.C. 20240

IN REPLY REFER TO:

MEMORANDUM

TO: Randall Trickey, Realty Officer, Eastern Region, Bureau of Indian Affairs

FROM: Michael D. Olsen, Acting Principal Deputy Assistant Secretary - Indian Affairs

DATE: June 10, 2005

RE: Oneida Indian Nation of New York Deed Transmittal Clarification

On April 7, 2005, you sent to the Land Titles and Records Office (LTRO) in Anadarko, Oklahoma 331 deeds totaling 17,193 acres in Madison and Oneida Counties, New York. The transmittal document attached to the deeds indicated that the deeds were to be recorded "in favor of the Oneida Nation of New York in restricted status pursuant to 25 U.S.C. 177."

The deeds were to be recorded with the LTRO pursuant to 25 C.F.R. Part 150, which describes the authority, policy, and procedures for recording and maintaining title documents. The ministerial act of recording deeds such as those pertaining to the Oneida Nation land at issue simply provides the Bureau of Indian Affairs with information used for recordkeeping purposes. In this case, the recordation of the Oneida Nation deeds does not have the legal effect of designating these lands as restricted against alienation pursuant to 25 U.S.C. 177. Accordingly, the use of the term "restricted status" in the transmittal document is confusing and inappropriate.

In order to alleviate the confusion generated by the April 7, 2005 transmittal document, please file with the Anadarko LTRO by noon, Monday June 13, 2005 a revised transmittal document. Please strike from the Remarks paragraph "in favor of the Oneida Nation of New York in restricted status pursuant to 25 U.S.C. 177" and replace it with "for the Oneida Nation of New York pursuant to 25 C.F.R. Part 150."

Should you have any questions, please do not hesitate to contact me at (202) 208-7163. Thank you for your immediate attention to this matter.